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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)			
	10/591,392	NENCIONI ET AL.			
Office Action Summary	Examiner	Art Unit			
	FRANK D. DUCHENEAUX	1794			
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence address			
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA  - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period w.  - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tim vill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	lely filed the mailing date of this communication. (35 U.S.C. § 133).			
Status					
Responsive to communication(s) filed on <u>9/24//</u> This action is <b>FINAL</b> . 2b)⊠ This      Since this application is in condition for allowar closed in accordance with the practice under <i>E</i>	action is non-final. nce except for formal matters, pro				
Disposition of Claims					
4) Claim(s) 63-124 is/are pending in the application 4a) Of the above claim(s) 86-124 is/are withdray 5) Claim(s) is/are allowed. 6) Claim(s) 63-85 is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or Application Papers  9) The specification is objected to by the Examine 10) The drawing(s) filed on is/are: a) access applicant may not request that any objection to the or	wn from consideration. relection requirement. r. epted or b) □ objected to by the E				
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).					
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.					
Priority under 35 U.S.C. § 119					
<ul> <li>12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</li> <li>a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> <li>* See the attached detailed Office action for a list of the certified copies not received.</li> </ul>					
Attachment(s)  1) Notice of References Cited (PTO-892)  2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  3) Information Disclosure Statement(s) (PTO/SB/08)  Paper No(s)/Mail Date 9/1/2006.	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:	ite			

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#### **DETAILED ACTION**

#### Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 63-85, drawn to a product.

Group II, claim(s) 86-115, drawn to a process.

Group III, claim(s) 116-124, drawn to an apparatus.

- 2. The inventions listed as Groups I, II and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: 1) Group I recites a multi-ply web material comprising at least three plies joined to <u>one another</u> via an <u>adhesive</u>, which is not required Groups II and III; 2) Group III recites a <u>third path</u> for said third ply, which is not required in Group II; 3) Group III recites a first embossing-<u>laminating unit</u> comprising a first <u>laminating roller</u> and a second embossing <u>unit</u>, neither of which is not required in Groups I and II.
- 3. During a telephone conversation with Mary Breiner on 1/5/2009 a provisional election was made with traverse to prosecute the invention of Group I, claims 63-85. Affirmation of this election must be made by applicant in replying to this Office action. Claims 86-124 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

- 4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).
- 5. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained.

Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. Failure to do so may result in a loss of the right to rejoinder. Further, note that the prohibition against double

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patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

# **Specification**

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (1) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

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6. The disclosure is objected to because of the following informalities: Headings/title of the disclosure must include the items listed above and must be in upper case without underlining.

Appropriate correction is required.

7. The specification and drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

# Information Disclosure Statement

8. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

## Claim Rejections - 35 USC § 112

- 9. The following is a quotation of the second paragraph of 35 U.S.C. 112:
  - The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
- 10. Claims 63-85 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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11. **Regarding claim 63**, the examiner rejects the use of the word "random" in describing the distribution of the respective first and second decorative elements. The usage of this word, which denotes complete disorder, is inconsistent when used in tandem with "pattern," which requires a degree of order. In addition, the hierarchical relationship between the "elements" and "protuberances" is ambiguous with respect to the density of one or both of these structural recitations.

- 12. **Claim 64** recites the limitation "said area" on the last line of said claim. There is insufficient antecedent basis for this limitation in the claim.
- 13. Claim 69 recites the limitation "geometrical form" and "height less than." The examiner notes that the former limitation is ambiguous in that it fails to denote to which element(s) of the background it is applied, e.g. the protuberances when viewed from a vantage perpendicular to the ply surface, the walls of the protuberances, etc. The latter limitation is ambiguous in that it is unclear as to what direction this phrase applies, e.g. the height of the surface of the protuberance pointing inward or otherwise.
- 14. **Claim 83** recites the limitation "said second adhesive" on line 2 of said claim. There is insufficient antecedent basis for this limitation in the claim.
- 15. **Regarding claim 84**, the phrase "made up" is one of a broad and unclear scope and is therefore ambiguous.
- 16. **Regarding claim 85**, the word "symmetrical" is ambiguous as it does denote as to which direction from the said axis the symmetry is apparent, e.g. along the surface of said web or transverse to it.

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# Claim Rejections - 35 USC § 102

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

18. **Claims 63-68, 76, 79-82, 84-85**, are rejected under 35 U.S.C. 102(b) as being anticipated by Roussel et al. (US Patent 6599614 B1).

Regarding claim 63, Roussel teaches a three ply absorbent paper product (title) comprising external first and second embossed plies including salient patterns (first and second patterns) having at least in part discrete protrusions (first and second decorative elements/protuberances) pointing inward of the structure and a central ply (column 3, lines 3-9) whereby in an essential feature of the invention, each of the embossed external plies is adhesively bonded via the distal surfaces (interposed) of the protrusions to the central ply and that the embossed external plies have a pattern density exceeding 30 protrusions /cm² (3 elements/cm² with greater than or equal to one protuberance/element)(column 3, lines 10-13). Roussel also teaches that the plies are assembled by adhesively bonding (first adhesive) the distal surfaces of at least a portion (some) of the protuberances of each of the external plies (first ply included) to the central ply (column 3, lines 7-12). Roussel further teaches that the pattern density of the external plies varies (random) from one to the other (column 3, lines 26-27) and that the external second embossed ply includes

protrusions distributed at a specific constant pitch, which <u>differs</u> from that of the protrusions of the first ply (column 4, lines 53-56).

**Regarding claims 64-65**, Roussel teaches a feature of embossing a first and second ply with salient patterns of discrete protrusions and superposing a third unembossed ply on the protrusions of the first of the embossed plies and depositing (applied) an adhesive (first adhesive) on the third ply and assembling the superposed first ply and third ply to the second embossed ply, whereby the deposition of the adhesive on the third ply is such that part of the adhesive crosses (seeps) the third ply and allows bonding of all three plies to each other (column 3, lines 47-67 and column 4, lines 1-3).

Although Roussel does not disclose the limitation "made to seep" as recited in claim 65, it is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113.

Therefore, absent evidence of criticality regarding the presently claimed process and given that Roussel meets the requirements of the claimed structure, Roussel clearly meets the requirements of the present claims.

Regarding claims 66-68, Roussel teaches a hot melt glue is atomized onto the inner surface of the external embossed plies (<u>first and second adhesive</u>), whereupon the third ply is <u>sandwiched</u> between the external plies and the set is assembled into a web (column 8, lines 41-44) and further that the adhesive can be applied over the full surface (<u>at least some of the protuberances</u>) of the plies or only partially (column 8, lines 45-47). Roussel also teaches that one (<u>first ply</u>) of the plies includes combined patterns, one of which is the <u>background pattern</u> (column 3, lines 31-33).

**Regarding claim 76**, Roussel teaches a central or <u>third</u> smooth or <u>unembossed ply</u> (column 4, lines 50-51 and figure 1, reference number 4).

Regarding claims 79-81, Roussel teaches that each ply (<u>first</u>, second and third ply) includes one or more layers forming a laminate (<u>two or more layers</u>) (column 5, lines 12-13).

Although Roussel does not disclose mechanical ply-bonding as recited in claim 80, it is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the

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prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113.

Therefore, absent evidence of criticality regarding the presently claimed process and given that Roussel meets the requirements of the claimed structure, Roussel clearly meets the requirements of the present claims.

**Regarding claim 82**, Roussel teaches a product having a differential <u>delamination</u> strength by embossing a first and second ply with protrusions, superposing a <u>third unembossed ply</u> on the protrusions of the first ply, depositing an adhesive on the third ply and assembling the superposed plies to the <u>second ply</u> by applying sufficient pressure to ensure <u>bonding</u> of the three plies by means of adhesive (column 3, lines 48-62).

**Regarding claims 84-85**, Roussel teaches a web of said invention in <u>roll</u> form (column 5, lines 54-59) as well as having external plies with patterns (<u>decorative elements</u>) and different pitches in the direction of advance and in the transverse direction (symmetric)(column 5, lines 29-30).

# Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

- 20. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  - 1. Determining the scope and contents of the prior art.
  - 2. Ascertaining the differences between the prior art and the claims at issue.
  - 3. Resolving the level of ordinary skill in the pertinent art.
  - 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 21. Claims 69-74 are rejected under 35 U.S.C. 103(a) as being obvious over Roussel et al. (US Patent 6599614 B1) in view of Laurent et al (US Patent 6106928) and in further view of Biagiotti (US Patent 6755928 B1).

Regarding claims 69-73, Roussel teaches a three ply absorbent paper product as in the previous rejections of claims 63-68 annotated above. Roussel also teaches that the two combined patterns (made up of protrusions, see figure 1 for protrusion's geometric form) have different elevations (column 3, lines 31-35). Roussel fails to teach a second ply with a background pattern, a first ply and a second ply with protuberances of equal to or greater than 8 protuberances/cm<sup>3</sup>, or a background of said second ply wherein the protuberances of a background pattern are of a height less than the protuberances forming said second decorative pattern. Roussel is silent towards a background pattern of a second ply that is flattened at a level of the protuberances of the forming the first decorative elements of said first ply.

However, Laurent teaches an embossed absorbent paper having combined patterns (title) said paper comprising a stratified sheet composed of at least two plies of paper that were embossed separately before being joined (column 4, lines 30-32), whereby each comprises, on its side facing into the stratum, first and second protrusions, respectively, arrayed in a first and a second pattern (column 4, lines 36-38) with said second pattern being a background pattern (column 3, lines 32-33). Laurent continues to teach that the height of the second protrusions is less than that of the first protrusions (column 4, lines 52-54) with the second protrusions arrayed at a rate of at least 30/cm² (column 3, lines 39-42). Laurent further teaches a background pattern ensuring technical background contribution of thickness and adsorption (column 3, lines 50-52) as well as an eye pleasing textile look because of the high density of the protrusions of the background pattern (column 3, lines 54-56) and provides a contrast for the main pattern (column 3, lines 59-62).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the multiply paper as taught by Roussel with outer plies comprising background patterns of specific density on both outer plies to obtain a product with improved thickness, absorption and aesthetic appeal as in the present invention.

**Regarding claim 74**, Roussel and Laurent teach an absorbent paper product as in the previous rejections of claims 63-71 annotated above. Roussel and Laurent are silent towards a background pattern of a second ply that is flattened at a level of the protuberances forming the first decorative elements of said first ply.

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However, Biagiotti teaches an embossed web material and product (title) comprising a first layer (first ply) furnished with a background layer made up of a first set of protuberances; and a second set of protuberances (first decorative elements) superimposed on the first set, whereby the first layer is coupled to a second layer via gluing and said second layer may be smooth, embossed with a background pattern, embossed with an ornamental motif or embossed both with a background pattern and an ornamental motif (column 2, lines 33-49). Biagiotti continues to teach that the embossment process yields a final web material whereby the second set of protuberances flattens the background embossments of the second layer (column 9, lines 19-27 and figures 7 and 11 reference numbers P5 and P3).

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It would have, therefore, been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Biagiotti with those of Roussel and Laurent to obtain a multi-ply paper product comprising protuberances of a first ply to extend inward of the product thereby compressing the background protuberances of a second ply in order to provide the final product with adhesion between all the protuberances of greatest depth and increased crush resistance.

22. Claim 75 is rejected under 35 U.S.C. 103(a) as being obvious over Roussel et al. (US Patent 6599614 B1) in view of Graff et al (US 2005/0034828).

**Regarding claim 75**, Roussel teaches a three ply absorbent paper product as in the previous rejections of claim 63. Roussel fails to teach a web material wherein at least some of the

protuberances defining second decorative elements are flattened at a level of respective protuberances defining said first decorative elements.

However, Graff teaches a multi-layer sheet of absorbent paper comprising an embossed first ply comprising first and second protrusions (para. 0036 and figure 2, reference numbers 12, 18 and 38, respectively), whereby all the tops (figure 2, reference number 39) of the first protrusions are adhesively bonded to the unembossed (flattened) second ply (figure 2, reference number 14). Although Graff does not disclose "flattened protuberances forming second decorative elements", it is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983). See MPEP 2113.

Therefore, absent evidence of criticality regarding the presently claimed process and given that Graff's unembossed (<u>flattened</u>) second ply structure meets the requirements of the claimed composition, Graff clearly meets the requirements of the present claims.

It would have, therefore, been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Graff with those of Roussel to obtain a multi-ply paper product comprising first protuberances of a first ply to extend inward of the product thereby

allowing for adhesive contact between all of said first protuberances and said second ply as well as mitigating crush resistance degradation.

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23. Claims 77-78 are rejected under 35 U.S.C. 103(a) as being obvious over Roussel et al. (US Patent 6599614 B1) in view of Hollenberg et al (US Patent 6221211 B1).

Regarding claims 77-78, Roussel teaches a three ply absorbent paper product as in the previous rejections of claim 63. Roussel fails to teach a third ply with color or a printed pattern.

However, Hollenberg teaches multi-ply tissues having internal indicia (title) comprising a multi-ply tissue comprising two outer plies and one center ply, said center ply containing colored or patterned indicia which is visible through both outer plies (column 1, lines 49-52) and also suitabable are solidly colored center plies (column 2, lines 19-21). Hollenberg continues to teach facial and bath tissues provided with a distinctive visual cue or indicator accomplished by printing, dyeing or otherwise coloring an internal surface of one or more plies of a multi-ply tissue, which indicates that such tissues contain unique ingredients or properties (column 1, lines 20-25).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the central ply as taught by Roussel with a printed pattern or coloration as taught by Hollenberg in order to further provide decorative features to said absorbent paper as in the present invention.

24. **Claim 83 is** rejected under 35 U.S.C. 103(a) as being obvious over Roussel et al. (US Patent 6599614 B1) in view of Biagiotti (US Patent 6755928 B1).

**Regarding claim 83**, Roussel teaches a three ply absorbent paper product as in the previous rejections of claim 63. Roussel fails to teach a first and second adhesive that chromatically different from each other.

However, Biagiotti teaches a method and device for producing an embossed web material and product made (title) wherein the method includes producing a soft product and increasing the decorative effect of the embossing by combining it with the use of <u>colored adhesives</u> (column 2, lines 22-26) so that ornamental motifs stand out from the background of the web material. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine a plurality of colored adhesives as taught by Biagiotti with the inventive concepts as taught by Roussel to obtain a more decorative absorbent paper with varied chromatic possibilities as in the present invention.

#### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANK D. DUCHENEAUX whose telephone number is (571)270-7053. The examiner can normally be reached on M-Th, 7:30 A.M. - 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie E. Shosho can be reached on (571)272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**FDD** 

/Callie E. Shosho/ Supervisory Patent Examiner, Art Unit 1794